

EMPLOYER STATUS DETERMINATION

RailTex Logistic Company, Inc. (RLC)

This is the determination of the Railroad Retirement Board regarding the status of RailTex Logistic Company, Inc. (RLC) as an employer under the Railroad Retirement Act (45 U.S.C. §231 et seq.)(RRA) and Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.)(RUIA).

Information provided by Julie Herbort, Tax Manager for RLC, indicates that RLC is a privately-held corporation which brokers intermodal and trucking services for H.E.B. Food Stores. RLC arranges the shipping by truck and by rail for H.E.B. Food Stores, contracting with three trucking companies and one rail carrier, the Southern Pacific Transportation Company (SPTC)(BA No. 1713). RLC began operations on September 3, 1996, and first compensated its only employee on October 15, 1996.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. §231 (1)(a)(1)) defines a covered employer as:

- (i) any carrier by railroad, subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code;
- (ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers * * * and which operates any equipment or facility or performs any service (other than trucking service, casual service, and the casual operation of equipment and facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad.

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. §3231).

The general rule is that a company, not otherwise a carrier, may nonetheless be a covered employer under the Acts if it is under common control with a carrier and performs service in connection with railroad transportation. Section 202.4 of the Board's regulations (20 CFR 202.4) defines "control" as follows:

A company or person is controlled by one or more carriers, whenever there exists in one or more carriers, the right or power by any one means, method or circumstance, irrespective of stock ownership to direct, either directly or indirectly, the policies and business of such a company or person and in any case in which a carrier is in fact exercising direction of the policies

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and business of such a company or person.

Section 202.5 of the Board's regulations (20 CFR 202.5) defines "common control" as follows:

A company or person is under common control with a carrier, whenever the control (as the term is used in §202.4) of such company or person is in the same person, persons, or company as that by which such carrier is controlled.

Section 202.6 of the Board's regulations, 20 CFR 202.6, provides that:

The service rendered or the operation of equipment or facilities by a controlled company or person in connection with the transportation of passengers or property by railroad is "casual" whenever such service or operation is so irregular or infrequent as to afford no substantial basis for an inference that such service or operation will be repeated, or whenever such service or operation is insubstantial.

Under these criteria, the Board finds that RLC is under common control with one or more of the approximately 20 rail carrier affiliates owned by its parent company, RailTex, Inc. RLC's officers and directors are also officers and directors of its rail carrier affiliates.

With respect to the issue of service in connection with railroad transportation, the Board finds that RLC brokers freight services by both truck and rail for its only client, H.E.B. Food Stores (H.E.B.), a grocery chain. RLC does not perform service for any of the railroads owned by its parent company. RLC arranges the shipping of H.E.B. products by truck to the train, and from the train, by truck to a distribution center. RLC does not own any railroad equipment or facilities, and does not jointly control any equipment. RLC is not a lessee or lessor of any railroad track or equipment, and RLC employees do not perform work on property owned by a railroad. RLC arranges shipping by rail through the SPTC, which is not owned by RLC's parent, RailTex, Inc., and is not otherwise an affiliate carrier of RLC.

The Board thus finds that the services rendered by RLC for H.E.B. Food Stores are not service in connection with railroad transportation within the meaning of the Railroad Retirement and Railroad Unemployment Insurance Acts. The Board may reconsider this finding if, at a later date, RLC should broker the freight services of one or more of its affiliate rail carriers.

Information in the record establishes that although RailTex Logistics, Inc. is a privately-held freight-brokerage company owned by RailTex, Inc., under common control with one or more

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affiliated carriers, it does not perform service in connection with railroad transportation. Accordingly, the Board finds that RLC is not a covered employer under the RRA and the RUIA.

Glen L. Bower

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C. 432-97

TO: The Board

FROM: Catherine C. Cook
General Counsel

SUBJECT: Coverage Determination
RailTex Logistic Company, Inc. (RLC)

Attached is a proposed coverage ruling for Board approval.

Attachment

